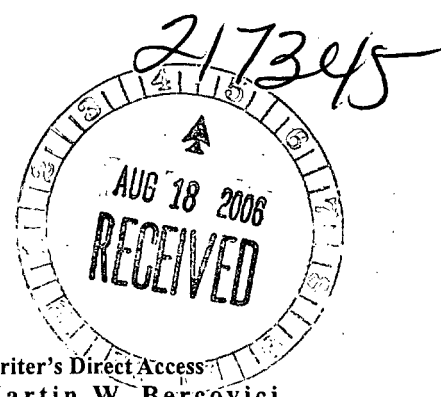


1001 G Street, N.W.
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Writer's Direct Access
Martin W. Bercovici
(202) 434-4144
bercovici@khlaw.com

August 18, 2006

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: The Louisiana and North West Railroad Company, Discontinuation of Service at
Magnolia, Arkansas, STB Docket No. ____; Petition of Albemarle Corporation
for Emergency Service Order and Petition of Albemarle Corporation for
Immediate Relief Under 49 U.S.C. § 721(b)(4)

Dear Secretary Williams:

On behalf of Albemarle Corporation we are submitting herewith a Petition for
Emergency Service Order and also a Petition for Immediate Relief Under 49 U.S.C. § 721(b)(4).

Associated with this letter you will find our check in the amount of \$400.00 in payment
of the filings fees prescribed by 49 C.F.R. § 1002.2 (f) (63) and (88) to cover these two petitions.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink that reads 'Martin W. Bercovici'. The signature is fluid and cursive, with the first name 'Martin' being the most prominent part.

Martin W. Bercovici

Enclosure

cc: Edward J. Fishman, Esq. (via hand delivery)
Ouachita Railroad Company (via overnight delivery and via electronic mail)
Federal Railroad Administration (via hand delivery)

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**



In the Matter of: The Louisiana and North West)
Railroad Company, Discontinuation of Service)
At Magnolia, Arkansas)

Docket No. _____

**PETITION OF
ALBEMARLE CORPORATION
FOR EMERGENCY SERVICE ORDER**

Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, N.W., Suite 500W
Washington, DC 20001
202-434-4144
bercovici@khlaw.com

August 18, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

In the Matter of: The Louisiana and North West)
Railroad Company, Discontinuation of Service) Docket No. _____
At Magnolia, Arkansas)

PETITION OF
ALBEMARLE CORPORATION
FOR EMERGENCY SERVICE ORDER

Albemarle Corporation ("Albemarle"), by its attorney, pursuant to 49 U.S.C. § 11123 and 49 C.F.R. Part 1146, respectfully requests the Surface Transportation Board to find that The Louisiana and North West Railroad Company ("LNW") has imposed an unlawful embargo on switching service leading to an imminent unauthorized cessation of operations and a failure of traffic movement which will create an emergency situation of such magnitude as to have a substantial adverse effect on Albemarle, and that the Board issue an Emergency Service Order authorizing another carrier to operate over the lines of LNW to provide necessary services to Albemarle. This is the third time in eight (8) months that LNW has given notice of an immediate cessation of switching services in violation of its duty to provide service on reasonable request.

I. Parties

Albemarle is a Virginia corporation, with administrative offices located in Baton Rouge, Louisiana, which operates chemical production facilities, as pertinent to this Petition, at Magnolia (aka, Ethyl), Arkansas.

LNW is a railroad common carrier and is a Louisiana corporation. It is headquartered in Homer, Louisiana. LNW provides freight service from McNeil, Arkansas, where it connects with the Union Pacific Railroad, to Gibsland, Louisiana, where it interchanges with the Kansas City Southern Railway, a distance of approximately 62.6 miles.

II. Factual Background

The background underling this matter is set forth in a proceeding docketed before the Board as Docket No. 42096, Albemarle Corporation--Petition for Declaratory Order--Certain Rates and Practices of The Louisiana and North West Railroad Company (Feb. 1, 2006), including the First Amendment to said Petition (Feb. 23, 2006).

Briefly, Albemarle produces bromine and bromine-related products. Chlorine is utilized in the bromine production process. Both the chlorine and the bromine products are regulated hazardous materials. Albemarle both ships and receives products by rail, utilizing the LNW which exclusively serves Albemarle's plant. Albemarle and its predecessors have had a relationship with LNW for more than 35 years in which LNW provides linehaul transportation service, switching service, track leases and weighing services. LNW's main line runs in a north-south direction. Albemarle's plant lies to the east of the LNW line, and storage track utilized by Albemarle lies to the west. Prior to the instigation of this controversy by LNW at Thanksgiving, 2005, LNW provided both in-plant switching and also switching between Albemarle's plant and separated storage tracks. Switching between the plant and the storage track is conducted over the main line of LNW, commonly entailing operations over 1,000-2000 feet of the main line. Following LNW having more than quadrupled its switching fees, Albemarle undertook to

provide its own switching within its plant which did not require crossing of LNW's line, and has utilized LNW for switching between the plant and its storage tracks.

Three times LNW has threatened to immediately stop switching Albemarle's plant: December 21, 2005,¹ on February 17, 2006,² and now again on August 17, 2006.³ The notice provided on Thursday, August 17, 2006 by Larry Brooks, Vice President and General Manager of LNW to Danny Wood, Supply Chain Manager of Albemarle, was confirmed in telephone conversations conducted on both Thursday and today, and is to be effective as of Monday, August 21, 2006. This most recent notice of termination of switching was given after Mr. Wood notified Mr. Brooks that Albemarle would resume its own in-plant switching, which Albemarle had restored to LNW on August 7, 2006, pending finalization of settlement discussions. Upon the failure to reach a settlement agreement, Mr. Wood advised Mr. Brooks that Albemarle will resume providing its own in-plant switching effective August 21, 2006, but will continue to utilize LNW for switching between the plant and Albemarle's storage tracks. In addition, while LNW did appear at the plant on Friday, August 18, 2006 to provide switching, it imposed an arbitrary limit (1 hour), whereas LNW typically spends an average of 3-4 hours to perform all requested switching, and left a number of requested movements unfulfilled.

The notice by LNW that it would forthwith terminate all switching was given notwithstanding (i) the statutory requirement of 49 U.S.C. § 11101 (a) to provide service on reasonable request; (ii) the requirement of 49 U.S.C. § 11101 (c) for 20 days notice of a change of service, (iii) the holding out to perform switching service in LNW's Freight

¹ See Exhibit 3 to Petition for Declaratory Order.

² See First Amendment to Petition for Declaratory Order.

³ See Exhibit A to this Petition.

Tariff 8002-E,⁴ (iv) a commitment from LNW's prior General Manager given February 28, 2006 that LNW would provide at least 20 days notice of any future decision to terminate switching service,⁵ and (v) a commitment made by LNW's counsel in a meeting with the Associate Director of the Board's Office of Compliance and Enforcement and Albemarle's undersigned counsel held on Friday, February 17, 2006, after the second service termination threat, that LNW would provide statutory notice before any termination of service.

Termination of Albemarle's ability to secure movement of loaded in-bound cars from its storage track to its plant and of loaded and unloaded out-bound cars from its plant to its storage track as threatened by LNW would result in the closure of Albemarle's Magnolia production plant (the South Plant). The cost to Albemarle of such action would be in excess of \$250,000 for the first three days and in excess of \$50,000 per day thereafter. Diversion to truck, which cannot occur from a practical standpoint since the quantity of trucks necessary to replace rail service for the movement of chlorine and bromine products is not available, would place approximately 12 tank trucks per day—over 4300 shipments per year—of chlorine alone on two-lane roads moving through Magnolia and other towns within the State of Arkansas.

The Ouachita Railroad Company ("Ouachita"), a short line railroad, has agreed to provide the switching services required by Albemarle in the event of a discontinuation of service by LNW. *See* Exhibit C associated herewith.⁶ Since LNW has only limited operations and runs only 4 trains per week over the track passing Albemarle's facility,

⁴ *See* Exhibit 4 to Petition for Declaratory Order.

⁵ *See* Exhibit B to this Petition.

⁶ The financial terms of the Ouachita offer are redacted inasmuch as Section 1146.1(b)(iii) only requires the demonstration of a commitment to provide service, not the financial terms thereof. The financial terms are commercially sensitive inasmuch and should not be publicly disclosed.

Ouachita easily can provide the switching services needed by Albemarle between its plant and its storage track without interference to LNW's line haul operations.

Moreover, in a pleading before this Board, LNW made the following statement: "However, even assuming that the LNW mainline must be used to complete a limited number of intraplant switch movements, Albemarle has provided no reason why it could not hire a qualified third party contractor to perform such intraplant switching services on its behalf."⁷ Twice Mr. Wood has inquired of Mr. Brooks how Albemarle could implement this opportunity;⁸ however, no response has been received. Assuming that the statement to the Board was made in good faith, and that LNW's counsel was not attempting to mislead the Board by advancing an argument known to be baseless and false, LNW's statement must be construed as an admission that allowing another carrier to provide the necessary switching is feasible and acceptable.

III. Argument and Request for Relief

It is well past time to bring to an end the conduct of LNW in treating its service as a yo-yo on a string, to be held out and then withdrawn at its whim as a negotiating tool to coerce Albemarle into an unreasonable and—to Albemarle— uneconomic financial arrangement. Albemarle requires assurance of service to its plant; and inasmuch as LNW refuses to give those assurances, Albemarle seeks an order authorizing alternative service by a carrier that is ready, willing and able to provide service to Albemarle.

As a common carrier, LNW has a duty to provide service upon reasonable request, 49 U.S.C. § 11101(a), and to give at least 20 days notice of any change of service, *id* at § 11101 (c). LNW seemingly acknowledged at least part of its statutory

⁷ The Louisiana and North West Railroad Company's Motion to Strike or in the Alternative Reply to Albemarle's Surreply, Docket No. 42096, at p. 10 (May 24, 2006).

⁸ See Exhibits D and E to this Petition.

responsibilities in its message to Albemarle of February 28, 2006 and through the representation of its counsel to the Board's Office of Compliance and Enforcement. Given that LNW cannot respect its statutory obligations and its commitments, Albemarle has no choice but to seek remedial action from the Board. Negotiation has not been successful, and neither has Albemarle's prior effort to informally address LNW's breach of its service obligation through the Board's informal processes. Albemarle thus seeks an Emergency Service Order to enable a third-party carrier to provide the service which LNW chooses not to perform and has advised will be terminated effective Monday, August 21, 2006. Albemarle has no confidence that in the current environment an order to LNW to provide service would be executed faithfully and without degradation, particularly after the episode today whereby LNW arbitrarily limited the switching service it would perform.

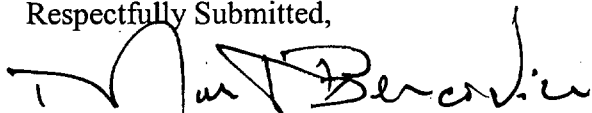
The relief requested by Albemarle is not extraordinary: not only does the statute directly authorize such substituted service but also both the Board and the Interstate Commerce Commission ("ICC") have authorized alternative emergency service under traffic embargo situations. Those situations included *Dardanelle & Russellville RR Co.—Lines of Arkansas Midland RR*, S.O. No. 1516 (ICC Mar. 28, 1994), order extended (STB Sep. 24, 1996); *West Jersey RR Co.*, S.O. No. 1517 (ICC June 23, 1995). *See also Pyco Industries, Inc.—Alternative Rail Service—South Plains Switching, LTD. Co.*, Finance Docket No. 34802 (served Jan. 26, 2006).

The Ouachita Railroad Company has committed to providing switching service to Albemarle. Albemarle understands that under Section 11123 of the Act an Emergency Service Order cannot extend beyond 270 days. Once the situation is stabilized,

Albemarle will address a long term solution to its service problems with LNW. In the meantime, Albemarle requires continuation of switching service to avoid the irreparable harm arising out of plant closure.

WHEREFORE, THE PREMISES CONSIDERED, Albemarle Corporation respectfully requests the Surface Transportation Board to find that the Louisiana and North West Railroad has unlawfully embargoed switching service to Albemarle and to issue an Emergency Service Order under the authority of 49 U.S.C. § 11123 to permit the Ouachita Railroad Company to provide switching service to Albemarle's Magnolia, Arkansas plant utilizing the lines of the Louisiana and North West Railroad. Albemarle further requests that the Board act expeditiously in this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Martin W. Bercovici", is written over a vertical line that extends from the signature down to the typed name below.

Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, N.W., Suite 500W
Washington, DC 20001
202-434-4144
bercovici@khlaw.com

Attorney for
ALBEMARLE CORPORATION

August 18, 2006

DECLARATION OF DANNY WOOD

I, Danny Wood, am the Supply Chain Manager of Albemarle Corporation, located at Albemarle's Magnolia, Arkansas production plant.

I have read the foregoing Petition for Emergency Service Order, and I affirm that the facts stated therein are true and correct based on my knowledge and information.

The foregoing is stated to be true and correct under penalty of perjury, and that I am authorized to file this statement. This affidavit is made this 18th day of August, 2006.

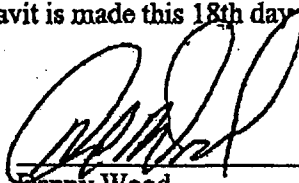

8/18/06
Danny Wood

Exhibit A

<lbrookslnw@bellsouth.net>

08/17/2006 07:59 PM

To: <Danny_Wood@albemarle.com>

cc: <ghausman@chicagoclassiccoach.com>

Subject: Switching

Danny,

I want to let you know that the LNW Railroad is more than willing and able to handle all of your switching needs on the Albemarle Plant site, however, it is a requirement that the LNW handles 100% of your plants switching needs or no switching at all.

Thank you,

Larry Brooks

Exhibit B

"Aaron Clark"

<alclarklnw@bellsouth.net>

To: <Danny_wood@albemarle.com>

cc:

Subject: Switching at Albemarle

02/28/2006 08:47

AM

Danny,
We will continue to provide switching services to Albemarle, and in the event that we decide in the future to stop providing such switching services, we will provide Albemarle with at least 20 days advance notice.

Aaron

Exhibit C

Ouachita Railroad

730 S Washington
El Dorado, AR 71730
(870)863-7044 (870)863-7048 FAX

Dear Sir,

08-18-06

The Ouachita Railroad is ready, willing and able to provide the switching service to Albemarle main plant, south of magnolia, AR. This service will include switching all rail racks, tracks (to include storage tracks both inside and outside the plant) and weighing railcars on railcar scale.

Arkansas Shortline Railroads Inc., Ouachita Railroad's parent company, has the personnel and equipment to provide this service without effecting operations on our other locations. Our goal is to provide safe and efficient switching service without interfering with the LNW Railroad. We will reduce interference with the LNW by scheduling our crews around their operations to limit disruption of their service.

The Ouachita Railroad will provide a three man crew and two locomotives to switch Albemarle

Redacted

I hope this proposal meets your approval and we can provide a service to Albemarle. If you have any questions, please call or email me at ouachitarailroad@sbcglobal.net

Thank you and have a great day,

//////SIGHED//////

Michael A. Robbins
General Manager
Ouachita Railroad

Exhibit D

From: Danny_Wood@albemarle.com
Sent: Friday, June 02, 2006 9:42 AM
To: lbrookslnw@bellsouth.net
Subject: LNW Mainline Usage

Larry,

I understand that you are the new General Manager for LNW replacing Aaron Clark. Please see the question below. I would appreciate your prompt response to this issue.

We note in a recent filing before the STB that LNW stated, "However, even assuming that the LNW mainline must be used to complete a limited number of intraplant switch movements, Albemarle has provided no reason why it could not hire a qualified third party contractor to perform such intraplant switching services on its behalf." (Docket 42096, May 24 at p. 10.)

We were not aware of this option. We knew that LNW was allowing SMI Steel access to the mainline for switching purposes using switching equipment that they own, but Albemarle has never accessed the LNW mainline for the purpose of switching cars. Please let us know how we could proceed as outlined above. Would you consider Ouachita a qualified third party contractor, and if not, who would you suggest?

Thanks,

DAW

Danny Wood
Supply Chain Manager
Albemarle Corporation
Magnolia, AR Site
Ph: 870-235-6374

Exhibit E

D Wood f-u email re LNW Mainline Usage 6 19 06

From: Danny_Wood@albemarle.com
Sent: Monday, June 19, 2006 1:14 PM
To: lbrookslnw@bellsouth.net
Cc: alclarklnw@bellsouth.net
Subject: Re: LNW Mainline Usage

Attachments: pic32662.jpg; pic32757.jpg

Larry,

I requested an answer to the question posed below several weeks ago. I have not received a response to this request. I would appreciate your prompt response to this issue.

DAW

(Embedded image moved to file: pic32662.jpg) Danny Wood
06/02/2006 08:41 AM
(Embedded image moved to file: pic32757.jpg)

To: lbrookslnw@bellsouth.net
cc:
bcc:

Redacted

Subject:

Larry,

I understand that you are the new General Manager for LNW replacing Aaron Clark. Please see the question below. I would appreciate your prompt response to this issue.

We note in a recent filing before the STB that LNW stated, "However, even assuming that the LNW mainline must be used to complete a limited number of intraplant switch movements, Albemarle has provided no reason why it could not hire a qualified third party contractor to perform such intraplant switching services on its behalf." (Docket 42096, May 24 at p. 10.)

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Thanks,

DAW

D wood f-u email re LNW Mainline Usage 6 19 06

Danny Wood
Supply Chain Manager
Albemarle Corporation
Magnolia, AR Site
Ph: 870-235-6374

CERTIFICATE OF SERVICE

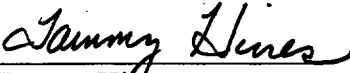
I, Tammy Hines, a secretary at the law firm of Keller and Heckman LLP hereby certify that on this 18th day of August, 2006 have served the foregoing Petition of Albemarle Corporation for Emergency Service Order on the following by hand delivery, unless otherwise indicated:

Edward J. Fishman
Kirkpatrick & Lockhart Nicholson Graham LLP
1601 K Street, N.W.
Washington, DC 20006-1600
Attorney for The Louisiana and North West Railroad Company

Ouachita Railroad Company
730 Washington
El Dorado, AR 71730

Via Overnight Delivery and via electronic mail at:
ouachitarailroad@sbcglobal.net

Federal Railroad Administration
U.S. Department of Transportation
1120 Vermont Avenue, N.W.
Washington, DC 20590


Tammy Hines

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

In the Matter of: The Louisiana and North West)
Railroad Company, Discontinuation of Service) Docket No. _____
At Magnolia, Arkansas)

**PETITION OF
ALBEMARLE CORPORATION
FOR IMMEDIATE RELIEF UNDER 49 U.S.C. § 721(b)(4)**

Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, N.W., Suite 500W
Washington, DC 20001
202-434-4144
bercovici@khlaw.com

August 18, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

In the Matter of: The Louisiana and North West)
Railroad Company, Discontinuation of Service) Docket No. _____
At Magnolia, Arkansas)

PETITION OF
ALBEMARLE CORPORATION
FOR IMMEDIATE RELIEF UNDER 49 U.S.C. § 721(b)(4)

Albemarle Corporation ("Albemarle"), by its attorney, pursuant to 49 U.S.C. § 721(b)(4), requests the Surface Transportation Board ("STB") to grant interim, immediate relief to Albemarle by authorizing substituted rail service to prevent closure of Albemarle's Magnolia, Arkansas production plant due to the unauthorized termination of service by The Louisiana and North West Railroad Company ("LNW").

Background

Contemporaneous with this Petition, Albemarle is filing a Petition for Emergency Service Order ("PESO"). That PESO details the unauthorized and unlawful discontinuation of service by LNW and the harm to Albemarle from said actions. Those facts will not be repeated herein, except as may be necessary to this Petition. All facts and arguments set forth in that PESO are incorporated herein by reference.

Authority and Standards

Section 721(b)(4) of the ICC Termination Act of 1995, P.L. 104-88, authorized the STB to "when necessary to prevent irreparable harm, issue an appropriate order without regard to subchapter II of chapter 5 of title 5 [the Administrative Procedure

Act].” The Board applies the traditional analysis applicable to injunctive relief to requests for agency action under Section 721(b)(4). *See DeBruce Grain, Inc. v. Union Pacific Railroad Company*, STB Docket No. 42023, slip op. at 3 n.3 (STB served Dec. 22, 1997), *citing Washington Metropolitan Area Transit Comm’n v. Holiday Tours*, 559 F.2d 841 (D.C. Cir. 1977). That analysis entails four factors: (1) substantial likelihood of success on the merits; (2) irreparable harm in the absence of the requested relief; (3) issuance of the order will not substantially harm other parties; and (4) granting the relief is in the public interest.

Analysis

1. Substantial likelihood of success on the merits: The PESO sets forth the facts which establish that LNW has notified Albemarle that it will unlawfully terminate switching service to Albemarle effective August 21, 2006. LNW has an obligation to provide service on reasonable request; the requested service is set forth in LNW’s tariff, and it has committed to comply with its statutory duty with regard to changing its service. LNW has not provided Albemarle with the requisite statutory notice to change (or in this case to terminate) service, and in any event it has no right to terminate service. Albemarle accordingly has demonstrated that it is entitled to relief, and the appropriate relief is for the Board to authorize substituted service under 49 U.S.C. § 11123. Albemarle has met the requirements of both the statute and the regulations, 49 C.F.R. Part 1146, for such relief.
2. Irreparable harm in the absence of the requested relief: The PESO sets forth the harm to befall Albemarle due to an unlawful cut-off of transportation

service, namely plant closure. Albemarle respectfully submits that such harm qualifies under the “irreparable harm” standard. Once production is lost, there is no way to effect recovery.¹

3. Issuance of the order will not substantially harm other parties: LNW will not be harmed inasmuch as it voluntarily terminated service to Albemarle.

Moreover, operating only four (4) trains per week over its line between McNeil, Arkansas and Gibslan, Louisiana, operations by another carrier providing the discontinued service to Albemarle easily can be coordinated with LNW and will not disrupt LNW’s other freight service operations.

Indeed, LNW even has suggested in a pleading before the Board that Albemarle secure another party to provide the switching service at issue herein. No third parties would be affected by the relief requested herein since the substituted service would be conducted in the vicinity of Albemarle’s plant and no other rail shipper is located in that immediate area.

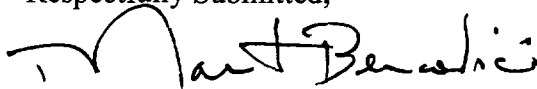
4. Granting the relief is in the public interest: There is no public interest benefit from allowing LWN’s unlawful termination of service to disrupt Albemarle’s chemical plant operations. The public interest lies in maintain the productive capacity of our nation, and in addressing commercial disputes through regular channels and not through coercive tactics as are being practiced by LNW.

In conclusion, all factors evaluated by the Board in considering action under Section 721(b)(4) of the Act support the immediate grant of interim operating authority

¹ Albemarle’s situation is distinguished from *BP Amoco Chemical Co. v. Norfolk Southern Ry. Co.*, Docket 42093 (STB served June 6, 2005), where reparations would make BP Amoco whole, and from *Arizona P.S.C. v. Burlington and Santa Fe Ry. Co.*, Docket No. 42077 (STB served Oct 14, 2003), where the Board found the allegation of harm to be speculative.

as requested in Albemarle's Petition for Emergency Service Order. Albemarle Corporation respectfully requests the Surface Transportation Board to grant this request.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Martin W. Bercovici". The signature is fluid and cursive, with a large initial "M" and "W".

Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, N.W., Suite 500W
Washington, DC 20001
202-434-4144
bercovici@khlaw.com

Attorney for
ALBEMARLE CORPORATION

August 18, 2006

CERTIFICATE OF SERVICE

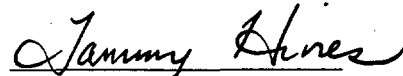
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Washington, DC 20590


Tammy Hines